

## LexisNexis® Agricultural Law *NetLetter*

A twice-monthly current awareness service reviewing recent cases on land use, marketing boards, environmental issues, creditor rights, animals, grain, import/export and other matters in an agricultural context.

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### HIGHLIGHTS

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- \* A judge of the Supreme Court of British Columbia has dismissed the the claim of British Columbia acreage owners, who brought an action to recover the cost of a storage building that collapsed as a result of an excessive snow load. The acreage owners had obtained a standard homeowners policy. They did not disclose to the insurer that fact that they leased a portion of their acreage to a third pary to graze as many as 15 cows on the land, or that they raised pigs for personal consumption and sale to third parties. They also used the building to store farm equipment contrary to an exclusion in the policy, and had their property assessed as a "farm". The court discusses the insured's duty of utmost good faith to disclose all risks and found that the owners' misrepresentaions and omissions were material. [Editors note: this case emphasizes the need of hobby farmers to make full disclosure of their "faming" activities to their insurer]. (Chase v. Personal Insurance Co., [CALN/2019-013](#), [\[2019\] B.C.J. No. 1066](#), British Columbia Supreme Court)

### NEW CASE LAW

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#### Chase v. Personal Insurance Co.;

British Columbia SupremeCourt,

K.W. Ball J.,

June 11, 2019.

[CALN/2019-013](#)

[\[2019\] B.C.J. No. 1066](#) | [2019 BCSC 936](#)

#### **Farm insurance — homeowners standard policy — denial of claim.**

Clarence Chase and Gayle Chase ("Chase") sued The Personal Insurance Company ("Personal Insurance") for breach of an insurance policy and the value of a steel frame fabric

covered storage building which collapsed because of a heavy snow load in February, 2017.

The building was used to store farm equipment.

Chase had obtained a policy for standard "principal residence" insurance from Principal Insurance in 2012. Information for the policy was provided by telephone. When the application was made Chase told Principal Insurance that the premises were occupied as a principal residence; that there was no business or income earning activity on the premises; that the premises were not a commercial location; that there were no detached structures on the premises larger than 800 square feet, and that there were no pets or animals on the premises.

The building which collapsed was much larger than 800 square feet. Mr. Chase testified that he operated the premises as a farm, and that farm equipment was kept in the building. Since approximately 2010 Chase had leased (and received income with respect to) a portion of the premises to graze cows and calves. There were 15 head of cattle on the premises in 2017, as well as a number pigs which Chase slaughtered and sold. Chase also rented a building on the property to a "hired man" who received a reduction in rent for the work he did.

The premises were taxed as a "farm" by the property tax assessment authority.

No change in the use of the premises was reported when the policy was renewed on an annual basis.

Personal Insurance did not insure farms and would have automatically denied coverage for a farm having regard to the risk. It denied the proof of claim based on misrepresentation, declared the policy void and returned the premiums.

The policy contained the following provision:

1. Misrepresentation:

If a person applying for insurance falsely describes the property to the prejudice of the insurer, or

misrepresents or fraudulently omits to communicate any circumstance that is material to be

made known to the insurer in order to be able to judge the risk to be undertaken, the contract is

void as to any property in relation to which the misrepresentation or omission was material.

The policy also required prompt notice of any change that is material to the risk.

Exclusion 23 in the policy provided that Personal Insurance did not insure "buildings or structures occupied by the Insured or others and used in whole or in part for...farming purposes...unless declared on the Coverage Summary page..."

An expert witness called on behalf of Personal Insurance testified that the Chase's farming related activity would be too substantial to be accepted under normal home owners coverage, and that the risk related to farming activities was too great.

Legal counsel for Chase argued that because of the limited extent of the farming operations, the premises should not be considered to be a farm, and that other people in the community had similar operations.

Decision: Ball, J dismissed the Chase claim [at para 40].

Ball, J observed [at para 26 and 27] that the law was clear, and that "...an insured has an obligation of utmost good faith to provide accurate particulars of all information relevant to the risks being insured ..." Failure to disclose material information is fatal to a subsequent claim whether the failure is deliberate or inadvertent: Lee et al v. Canadian Northern Shield Insurance, [2005 BCSC 866](#); Lafarge Canada v Little Mountain Excavating Ltd, [2001 BCSC 218](#).

Section 17 of the Insurance Act, RSBC 2012, c. I provides that the misrepresentation or failure to disclose "... must be material to the contract."

A fact is material "... where, if it had been disclosed, it would have influenced a reasonable insurer to decline the risk, or charge a higher premium ... ": Ontario Metal Products v Mutual Life of New York, [\[1924\] SCR 35](#) [at para 30].

Ball, J concluded [ at para 32] that "...the fact that income was generated by leasing acreage to a cow/calf operation, and that the property was operated as a farm and other livestock was raised and sold by the owners, were material to the risk being insured..."

Ball, J also concluded [at para 37 to 40] that Chase had a positive duty to disclose changes in the risk to Personal Insurance, and that exclusion 23 (no farming purpose) applied because the building was used to store farm equipment.

## CREDITS

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